

“The EU support modalities for upholding election integrity in the Western Balkans”

Assistant Professor Jasmina Dimitrieva, PhD

1. Introduction

SLIDE no. 2

Objectives

- To explain election standards guaranteeing election integrity in view of 1993 Copenhagen criteria
- To examine the EU support modalities for election integrity in view of EU integration prospects of Western Balkans

The photo is depicting OSCE/ODIHR election observation mission for the Presidential elections. I will return to this later when I will discuss the EU support modalities for W. Balkan.

First, I will discuss the criteria and standards of EU regarding election integration, which are relevant for W Balkans.

Second, we will look at the EU support modalities for election integrity for W. Balkans.

SLIDE no. 3

Introduction of the Key concepts

Election integrity is defined as “...elections based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle”.¹ While it is often used as a synonym for the paradigm of “free and fair” multi party elections, election integrity puts emphasis on the rule of law principle in elections and protection of active and passive election rights. I basically says that all election processes in the election cycle must be honest and not corrupt.

The European integration process can be examined through different lenses. Democratisation, establishment of the rule of law, transition from socialism to liberal democracy. Elections with integrity are a central feature of liberal representative democracy. They are indispensable for facilitating stability, peace and security not only at a national, but also at European level. The European integration perspective of the Western Balkans remains heavily entangled with the security considerations of the EU, as well as its members states. Starting from various wars and armed conflicts in the last century, to the migration crises and organised crime concerns. EU High Representative Josep Borrell commented: “*The European Union is not complete without*

¹ Global Commission on election, democracy and security, The Report of the Global Commission on Elections, Democracy and Security, 2012, p.6 available from <https://www.idea.int/sites/default/files/publications/deepening-democracy.pdf> accessed on 18 April 2021.

the Western Balkans. A credible enlargement policy is an investment in peace and security for the whole of Europe, even more so in times of increasing global challenges.”

It follows that electoral integrity in W. Balkans must be also at heart of the security considerations of the EU and individually, of its member states. Elections attract the attention as they determine the political dimension in the Western Balkan region, a region which has been suffering a lot these past decades, which is still straggling to achieve stability and deal with the conflicts in the neighborhood. Challenges to democracy, such as poverty, corruption and organised crime might result in corrupt regimes which attempt to defraud the electoral process, restrict and manipulate basic freedoms and refuse to be accountable to the citizens.

In some instances, electoral processes accomplished little more than to allow voters to select from one or another political party, dominated by the economic and social elite with little consideration of public interest and a lack of respect for the rule of law. All of this may negatively affects public confidence in democratic institutions and mechanisms.

SLIDE no. 4

Copenhagen Criteria 1993 - Criteria defined in the European Council’s Declaration in Copenhagen in 1993

- The 1993 Conclusions of the Presidency set forth the criteria for the EU membership, including:

*“...that the candidate country has achieved **stability of institutions guaranteeing democracy, the rule of law...**”*

However, the criteria are stated in a broad and general way and if you would like, are open to interpretations.

Copenhagen document OSCE – contains political commitments relevant for liberal democracies: free and fair elections, the rule of law and human rights protection.

Slide no. 5 and 6

What election standards need to be observed to the elections with integrity in compliance with the Copenhagen criteria?

The European election rules and principles, as discussed in the text below, are set out in all major international human rights instruments, including the OSCE Commitments and CoE Code of Good Practices in Electoral Matters. The basis, that is, what is called the “hard core” of European Electoral Heritage largely comprises the relevant universal rule set out in Article 21 of the UDHR and, especially, Article 25 of the ICCPR.²

² CoE, Code of Good Practice in Electoral Matters, pp. 5, 12.

Politically, it seems very difficult at the present moment for the states in the European region to agree to any legally-binding electoral commitments. This is implied by a lack of interest displayed by the CoE for such a legally-binding document. The lack of interest has also been confirmed in interviews with ODIHR and CoE election advisors 2007. The situation remained unchanged since then. Maybe governments are not willing to make their maneuvering space regarding elections more narrow, as elections are *per excellence*, an important part of the national sovereignty, and that that legally binding standards will be restrictive to the national sovereignty. Some consider that there is no need of such a legally binding document as the election standards have been elaborated in a number of international documents, maybe they are afraid that it can be abused in case of such an important matter as transfer and getting hold of state power, or maybe manipulated for secessionism, or even re-shape their political landscapes. Some consider that election standards are well known and elections without integrity are easily recognized.

Some of the instruments like the ECHR and the Charter of Local Self Government are legally binding. Others, like the OSCE commitments and the Code of Good Practice in Electoral Matters are not legally binding. Some of the instruments are applicable only with respect to a particular type of election, or are lacking detail. Considering that the obligations in the election field are set out in various instruments of various European organizations, there is always a risk of disparities among them.

The primary pillar for the EP elections is composed of the EU primary and secondary legislation.³ In line with the universal vote principle,⁴ ToL has reaffirmed the Charter's⁵ individual approach in granting passive and active election rights to EU citizens for the EP and municipal elections, based on the place of their residence at the time of election

The second pillar embodies the electoral principles common to all member states. In this regard, the 2009 ToL⁶ referring to European elections speaks about "common principles" as an alternative to "a uniform procedure in all Member States". Since the EU member states seem far from reaching an agreement on an entirely uniform electoral procedure,⁷ the common electoral principles should continue safeguarding the equality of treatment across EU state boundaries. In addition to EU legislation, the ECHR Protocol 1-3 also contains common principles that should be applicable in the EU, because of the following arguments: a) both the EU Charter and the ToL

³ The EU pieces of legislation governing the EP elections are the following: ToL- Article 9A3, amended Articles 17, paragraph 2b and 19 of Treaty on Functioning of EU; 190, paragraph 1 (EP) of ToL; Charter- Articles 39 and 52 of the Charter; Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom, Official Journal, OJ L 278, dated 8 October 1976, p. 1 amended by Council Decision 2002/772/EC, Euratom, Official Journal OJ L 283, dated 21 January 2002, p. 1; Regulation (EC) No 2004/2003 of the European Parliament and of the Council dated 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding, Official Journal L 297, dated 15 November 2003, p. 1; Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Official Journal L 329, dated 30 December 1993, p. 34; Commission Recommendation dated 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament 2013/142/EU, Official Journal L 79/29 dated 21 March 2013. The 2003 Accession Act also contains applicable provisions.

⁴ Article 9A3 of ToL prescribes the following: "The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot". Its Article 190 paragraph 1, which amended the Treaty on the Functioning of the EU reads as follows: "1. The European Parliament shall draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with the principles common to all Member States. The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which shall act by a majority of its component Members, shall lay down the necessary provisions. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements."

⁵ Article 39 of the Charter prescribes the following: "Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State". Its Article 40 prescribes the following: "Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State".

⁶ See Article 190, paragraph 1.

⁷ See the EP MP Duff 2010 and 2012 electoral reform proposals to the EU Committee of Constitutional Affairs and the 2013 Commissions' Recommendation at <<http://www.alde.eu>>. Legal scholarship has also tackled the lack of agreement of the member countries about the same electoral model, see Lijphart, Patterns of Democracy (Serbian translation, published by Sluzbeni List CG Beograd) (1999) p. 103.

reaffirm the fundamental value of the ECHR in the human rights arena;⁸ b) each EU member is a party to the ECHR Protocol 1, Article 3;⁹ and c) the EP elections fall within the ambit of this article.¹⁰ Another argument, albeit not so strong legally speaking, can be made about the OSCE commitments' inclusion in the "common principles". They are approved by all EU members, and serve as a guide for enlightened understanding of "free and fair elections" in the EU region. Indeed, the ODIHR observed the EP elections in 2004 and 2009, and made recommendations in line with the OSCE political commitments.

On a broader level of principles, the general principles of the EU, like respect for fundamental rights, equality¹¹ and proportionality, which are tackled below, should not be left out of the electoral sources' catalogue. With respect to electoral legislation, the general EU principles of legal certainty and legitimate expectation are also applicable in the EU and in its member states. The observance of the general principle of transparency is indispensable for elections as a safeguard of their integrity.¹²

Indeed, the ECJ, through its case-law, has reminded the member states that general principles of EU law like equal treatment, prevention of discrimination and respect for human rights are alive and kicking also in the electoral area.¹³ Even more interesting is the ECJ's conclusion that a lack of general principle in the electoral franchise segment allows member state to freely regulate it.¹⁴ What is surprising about this judgment is the ECJ's referral to the electoral principles of

⁸ See Article 6, paragraph 3 of ToL and Article 52, paragraph 3 of the Charter.

⁹ See the Draft Revised Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, and paragraph 35 of its Draft Explanatory Report 47+1(2013)008 at <http://www.coe.int/t/dghl/standardsetting/hrpolicy/accession/Meeting_reports/47_1%282013%29008_final_report_EN.pdf> accessed on 4 May 2013. According to Article 1, of Protocol no. 1 of the Draft Agreement, the EU will accede to ECHR Article 3 of Protocol no. 1. Although the Draft Agreement on the Accession has been finalized in 2013, it still awaits conclusion of the internal procedures in the EU without a clearly foreseeable timeframe.

¹⁰ See *Mathews v. UK* cited above, p.87.

¹¹ The differentiation in treatment of persons in a similar position is justified only if there are objectively valid reasons to it, Graig, de Burca, EU Law (2003) pp. 390-391.

¹² Graig, de Burca, EU Law (2003) pp. 358-395.

¹³ Report from the Commission on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in elections for the European Parliament in the Member State of residence (Directive 93/109/EC), COM(2010) 603 final (2010) p. 10. See M.G. Eman and O.B. Sevinger v. the Netherlands, C-300/04, dated 12 September 2006, paras 60 and 61.

¹⁴ *Spain v. United Kingdom*, ECJ (Grand Chamber), C-145-04, 12 September 2006, para 33.

secret, direct, universal and free (mentioned-above), without listing equal suffrage as a key electoral principle.¹⁵ The ECJ omitted the principle of equal suffrage although it belongs to the European electoral heritage. Does this mean that controversy about the “digressive proportionality” in the EP¹⁶ contributes to the pragmatic interpretation of the key electoral principles? The counter-argument is rooted in the *sui generis* nature of the EU and of the EP; and in the EU’s deepening pace. Yet the principle of equal suffrage should not be forgotten in the EU architecture of democracy. Even more so, given that it could be hypothetically challenged before the ECtHR.

SLIDE NO. 7 - ECHR-

Article 3 of Protocol No. 1– Right to free elections “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 3 of Protocol no. 1 imposes a positive obligation on the ratifying states to hold free periodic and secret election of a legislature, which also includes regional parliaments with the law-making power.. In concrete terms, this translates into a genuine choice for voters and a lively political debate, protection of the candidates and voters from intimidations or threats, and deterrence and punishment of attempts to rig the elections. Simultaneously, it imposes a negative obligation on the states parties to the ECHR to refrain from any conduct which might endanger the free expression of the will of people by, for example, abusing the state funds and resources in an electoral campaign or by keeping political prisoners.¹⁷

Despite the lack of clear language stipulating any limitations,¹⁸ electoral rights are not absolute.¹⁹ Therefore, the Court considers that the interference with these rights is possible under the margin of appreciation doctrine. Under Article 3 of P-1 indirect democracy is derogable.

First, any interference with the qualified rights must be lawful, i.e., rooted in domestic substantive and procedural law, as well as in the ECHR.²⁰ The law must be of a certain quality,

¹⁵ Ibid. UK had encountered problems how to go about implementing the ECtHR Judgment *Matthews v. UK* referenced above p. 88, while safeguarding the equality principle.

¹⁶ Gallagher, Laver, Mair, Representative Government in Modern Europe (fifth edition) (2011) pp. 125-126.

¹⁷ Harris, Boyle, Warbrick, Law of the European Convention on Human Rights (1995) pp. 19-21.

¹⁸ See *Gitonas and others v. Greece*, Application nos. 18747/91, 19376/92, 19379/92, 28208/95 and 27755/95, Judgment of 1 July 1997, para. 39; *Etxeberria Barrena Arza Nafarroako Autodeterminazio Bilgunea and Aiarako and Others v. Spain*, Application nos. 35579/03, 35613/03, 35626/03 and 35634/03, Judgment of 30 June 2009, para 48.

¹⁹ Jacobs, White, Ovey, The European Convention on Human Rights (4th edition) (2004) pp. 389-390.

²⁰ See for example *Hirst (No. 2) v. the United Kingdom*, Application no. 74025/01, Judgment of 30 March 2004.

meaning that it must be predictable, precise, clear and accessible. If it gives discretionary powers, their scope and effect must be clearly annunciated. For electoral disputes, the ECtHR relies on the Code of Good Practice in Electoral Matters: electoral rules must be adopted in timely manner before elections in compliance with the principles of fairness and transparency.²¹

Second, the interference must pursue a legitimate aim. However, Article 3 of Protocol no. 1 does not contain a list of legitimate aims. The ECtHR has accepted a legitimacy of a plurality of aims such as crime prevention, protection of the rule of law, of a language arrangement that was publicly debated, and of national security. In fact, any aim mentioned in other ECHR articles or connected with institutional arrangements that reflect the public good in a democratic society, that is well-reasoned and justified, can be considered legitimate by the ECtHR. The very wording of Article 3, P-1 allows a wider margin of appreciation, as the ratifying states can adduce any exception they consider befitting in circumstances.

Third, there must be a necessity or pressing social need for the interference for the ECHR qualified rights, in election cases, the ECtHR conducts a balancing exercise between the right of an individual and protection of the public good. The interference complained of must not be disproportionate or arbitrary to the extent that it thwarts the free expression of the will of the people.²² The concept of arbitrariness encompasses the abuse of power, unfairness in the procedure and unjustified decisions in the electoral context.

Slide no. 8 Electoral Fraud and remedies *

In the case of *Namat Aliyev v. Azerbaijan*²³ the applicant complained about a number of irregularities on the election day, which made it impossible to determine the true opinion of the voters and infringed his passive election right. The ensuing legal remedies were to no avail. The

²¹ *Tănase and Chirtoacă v. Moldova* Application no. 7/08, Judgment of 18 November 2008.

²² See *Mathieu-Mohin and Clerfayt*, Application no. 9267/81, Judgment of 2 March 1987, paragraph 52; *Gitonas and Others v. Greece*, Application nos. 18747/91, 19376/92, 19379/92, 28208/95 and 27755/95, Judgment of 1 July 1997, paragraph 39; and *Yumak and Sadak v. Turkey* [GC] Application no. 10226/03, Judgment of 30 January 2007.

²³ Application no. 18705/06, Judgment of 8 April 2010.

OSCE/ODIHR election observation report recorded a number of serious irregularities. Interestingly enough, the ECtHR rejected the Government's argument that even if there were election irregularities they would have not effected the election outcome, as it found that what was at stake was not who would win the election, but the individual's right to stand for office. The ECtHR found a violation because the electoral commission left the applicant's complaint unexamined, and the appeals and supreme courts instead of investigating his subsequent appeals, rejected them for purely formalistic reasons.

In other election-related cases, the ECtHR re-iterated the important place that an adequate and effective legal remedy holds in a democratic society. Similarly, in another *Azerbaijani* case²⁴ a violation was found when authorities did not process the irregularities in a fair and impartial manner, which resulted in the annulment of elections to the detriment of the winning candidate who in no way participated in the commission of those irregularities. It transpires from the circumstances of this case, that the irregularities were committed with the purpose to deprive the winning opposition candidate of his right to occupy an office. So, it was not only the individual's right to stand for election what was at stake, but also the voters' choice about who was fit and trustworthy to occupy elected public office.

Effective Legal Protection is indispensable to preserve the integrity of elections. The ECtHR re-affirms that there is no true democracy without adherence to the rule of law doctrine. A proceeding must fulfill the standard of fairness, hence no undue burden should be placed on individuals in the electoral context. A judicial remedy must be adequate and effective.²⁵

The ECtHR declared the complaints under Article 6 about the unfairness of judicial proceedings related to elections inadmissible, holding that political rights, and not civil rights were at stake. Nonetheless, through its decisions in several cases against Azerbaijan²⁶ under ECHR Article 3,

²⁴ *Kerimova v. Azerbaijan*, Application no. 20799/06, Judgment of 30 September 2010. See also, *Mammadov v. Azerbaijan* (no. 2) Application no. 4641/06, Judgment of 10 April 2012; and *Hajili v. Azerbaijan*, Application no. 6984/06, Judgment of 6 December 2011 regarding annulment of electoral results.

²⁵ *Kerimova v. Azerbaijan*, Application no. 20799/06, Judgment of 30 September 2010. See also, *Mammadov v. Azerbaijan* (no. 2) Application no. 4641/06, Judgment of 10 April 2012.

²⁶ See, for example, *Namat Aliyev v. Azerbaijan*, Application no. 18705/06, Judgment of 8 April 2010.

Protocol no. 1, the ECtHR requires a thorough and effective investigation and impartial and objective examination of election-related cases by an impartial electoral administration.

The judgments sometime come 6 to 7 years after the elections, and thus did not represent an adequate redress for the applicants, in terms of their participation in elections. The judgments will attain their effect in the future, provided that the authorities change their practice that runs contrary to the requirements for free and fair elections. However, the enforcement of judgments, and the way they are enforced is also sometimes a problem.

Slide no. 9 - From W Balkans

Sejdić and Finci v. B&H, Application no. 27996/06, Judgment of 22 December 2009 [GC].

The Court found the electoral system discriminatory for any B&H citizen who was not a Bosniac, a Serb or a Croat. The candidates from smaller communities were declared ineligible to stand in presidential and legislative elections for the House of Peoples on the ground of their ethnic affiliation. Therefore, the ECtHR suggested an alternative measure, a power-sharing arrangement, which was not discriminatory in order for B&H to meet the relevant standards agreed upon entrance in the CoE.²⁷

The ECtHR declared inadmissible the application of *Ljube Boskovski*²⁸ regarding alleged violation of his right to stand for presidential election. After having examined the powers of the president in Macedonia, the ECtHR found that Article 3 of the ECHR Protocol no. 1 did not cover presidential elections regarding Macedonia, as the president did not have sufficient powers to qualify as a legislature.

In *Paunović and Milivojević v. Serbia*, 2016, the Court had occasion to rule on the practice of political parties consisting of using undated resignation letters signed, before taking up office, by their members who are elected to Parliament; the party is thus able to remove those members

²⁷ *Sejdić and Finci v. B&H*, Application no. 27996/06, Judgment of 22 December 2009 [GC].

²⁸ Application no. 11676/04, Decision of 2 September 2004.

from office at any time and against their will. The Court began by taking the view that, even though the resignation letter would be presented by the party, only Parliament was entitled to withdraw a seat. It was therefore the State which deprived the MP of his or her seat by accepting the resignation. The application of an MP who had lost his seat was thus admissible *ratione personae*. The Court then found that the impugned practice was at odds with domestic law, which required such resignations to be submitted by the MP in person. There had thus been a violation of Article 3 of Protocol No. 1. Venice commission: This is a serious violation of the freedom of a deputy to express his/her view on the merits of a proposal or action. It concentrates excessive power in the hands of the party leaderships.” Obligation of Members of the parliament to resign if they change their political affiliation – the case of Serbia.

-the free expression of the opinion of the people,

-do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate

-in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage (see *Hirst*, cited above, § 62, and *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 109, ECHR 2008).

an express reference to the “lawfulness” of any measures taken by the State. However, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and its Protocols (see, among many other authorities, *Amuur v. France*, 25 June 1996, § 5

SLIDE no.10

OSCE election standards and OSCE /ODIHR Election observation

What do recent OSCE/ODIHR election observation reports say for the W. Balkans in the past years?

When looking at the recent reports the first what catches the eye is that most of the recommendations remained unaddressed by the state authorities, so they find also their way in the next election report.

There are misgivings with respect to the stability of elections laws, when they were hastily changed, without giving a sufficient implementation period to the parties and election administration to implement them well.

Concerns with voter registration and accuracy of the Voters' lists is also pointed as a weakness that needs to be addressed by the authorities

Media coverage was usually favouring the ruling party or few major parties, without proceedings with analysis of their political platforms.

Campaign financing is also usually mentioned due to insufficient transparent finding and abuse of state resources.

Votes buying and voters intimidation is also among electoral irregularities.

SLIDE no. 11-electoral cycle from ace project

SLIDE no. 12 – selected election standards in view of election integrity

The following specific election standards are deduced for each of the phases of the electoral cycle by using the OSCE commitments extracted from the election-related documents OSCE/ODIHR, OSCE Human Dimension Commitments, 1 Thematic Compilation 3rd edition (2011) pp. 80-84; and Existing Commitments for Democratic Elections in OSCE participating states (2003). The ODIHR election observation and assessment reports²⁹ have been used as a secondary source for defining the specific election standards, as follows:

Pre-election Phase

Electoral system and law: The basis of the OSCE commitments is connected with democracy as a sole system of governance in the OSCE region.³⁰ Voters are guaranteed at least one electoral opportunity,³¹ i.e., an election of one chamber of the legislature.³² Whereas the commitments do not foresee a special electoral system,³³ it must be shaped in accordance with the assumed OSCE election-related commitments. The obligations for elections to reflect the free will of the people, and to be periodic must be enshrined in the law.³⁴

²⁹ Information taken at <<http://www.osce.org/odihr>>.

³⁰ The Charter of Paris, 1990; and OSCE/ODIHR, OSCE Human Dimension Commitments, 1 Thematic Compilation 3rd edition (2011) p. xvii.

³¹ Beetham, Defining and Measuring Democracy (1994) p. 50.

³² Ibid paragraph 7.2.

³³ Ibid p. xvi.

³⁴ The 1990 Copenhagen Document, paragraphs 6 and 7.

From the election observation reports prepared by ODIHR, it transpires that legal framework is always scrutinized. As a rule, the electoral law must be clear and coherent, with the changes in the legislation adopted well before elections.³⁵

Election observation: The OSCE commitments require participating states to invite international and local observers in order to enhance their electoral process, and its integrity.³⁶ The election observation system of the participating states has been scrutinized by election observation missions, which require access to be granted by law to the observers, to all phases of the electoral process.³⁷ Since in all OSCE participating states there have been electoral observation or assessment activities, it follows that election observation has become a norm in the OSCE area. The principle of universality and non-discrimination for candidates and voters.

Voters: The principle of universality is underlined in the OSCE commitments, along with the principle of equality.³⁸ Participating states must guarantee equal suffrage, i.e., all adult citizens must have the same election rights without a distinction on the grounds of property, gender, social status or any other ground relating to his or her personal status.³⁹ Boundaries must be drawn to give equal weight of each vote to the extent possible. Along these lines, the electoral boundaries should be drawn in a way so as to favor the representation of minorities.⁴⁰ In view of the above requirements, the accuracy of the electoral rolls is always scrutinized by the ODIHR observers, while due consideration is given to the personal data protection requirement.⁴¹

³⁵ For example, Final election observation reports for the Republic of Belarus, 2012 Parliamentary Elections, pp. 5-6; for the Republic of Serbia, 2012 Parliamentary and Early Presidential Elections, p. 22; for Georgia 2012 Parliamentary Elections, p. 7; for the Republic of Moldova, 2011 Local Elections, p. 25.

³⁶ The 1991 Report from the Meeting of Experts on National Minorities requested election observers to be deployed in areas with national minorities.

³⁷ For example, Final election observation reports for the Republic of Croatia, 2011 Parliamentary Elections, p. 18; for the Republic of Slovenia, 2011 Early Elections for the National Assembly p. 8; for Spain 2011 Early Parliamentary Elections, p. 18; for Estonia, 2011 Parliamentary Elections, p. 23; Final Report on 2005 General Elections in the UK, p. 10.

³⁸ See the 1990 Copenhagen Document paragraph 7.3, and 2004 Sofia Annex: OSCE Action Plan for the Promotion of Gender Equality.

³⁹ Gheballi, Debating Election and Election Monitoring Standard at the OSCE: Between Technical Needs And Politicization (...) pp. 216-217.

⁴⁰ See Final Report of the 2012 Ukrainian Parliamentary Elections, p. 7.

⁴¹ For example, 2011 Final Report on Parliamentary Elections of Croatia, p. 17. For new voters' registration technologies see 2012 Assessment of the State Automated Information System and of the Voters' Registration System of the Republic of Moldova.

Candidates: The principles of universality and equality also apply with respect to the passive election right, i.e., the right to seek office either individually or in a group. This right may be subject to certain restrictions, as set out in the relevant international treaties. However, the passive election right must be respected without discrimination.⁴² There is no genuine election without a plurality of genuine choices. Therefore, single-party dominance is contrary to the OSCE commitments.

Electoral Administration: Whereas no specific OSCE commitment exists with respect to electoral administration, from the OSCE commitments as a whole, it transpires that elections must be administered impartially and independently. The ODIHR election observation reports regularly assess the work of the election administration in terms of their inclusiveness, effectiveness and efficiency.⁴³ Consensual decision-making is one of the indicators that partisan interests did not prevail in the electoral administration.⁴⁴ The election bodies' work with respect to electoral disputes must be of the same quality as a decision made by an independent arbiter.

Electoral Campaign:⁴⁵ Freedom of political association, of expression⁴⁶ and equal treatment of political groups must be ensured, i.e., no one should gain unlawful and unfair advantage by *inter alia* abusing state resources for its own campaigning. Free political campaigning and equal media access are a prerequisite for informed voters who only then can freely express their opinion. --
_Elections must be free from any violence⁴⁷ or pressure: states must ensure that all candidates freely carry out their campaigning and that political pluralism is protected.⁴⁸ Donations should be

⁴² The 1990 Copenhagen Document, paragraph 7.3.

⁴³ On impartial and independent administration see more in the OSCE Existing Commitments for Democratic Elections in OSCE Participating States (2003) p. 14.

⁴⁴ See, among others, final reports on Macedonian 2008 Early Parliamentary Elections and 2005 Local Elections, p. 6 for both. Regarding decision-making by consensus as a rule see Lijphart, *Patterns of Democracy* (Serbian translation, published by Sluzbeni List SCG Beograd) (1999) p. 35.

⁴⁵ OSCE electoral commitments set out in the Copenhagen Document from 1990, in particular paragraphs 7.5-7.8.

⁴⁶ Final Report on 2011 Parliamentary Elections in Turkey, p. 18.

⁴⁷ Check as secondary resource: Handbook for Domestic Election Observers (Macedonian translation, published by OSCE/ODIHR) (2005) p. 16.

⁴⁸ For example, Final report on Kazakhstan, 2012 Early Parliamentary Elections, p. 27.

clearly regulated, with specific ceilings imposed.⁴⁹ State resources must be treated separately from the party resources and must not be abused in a campaign.⁵⁰

Media must be impartial⁵¹ and give access to all electoral candidates under non-discriminatory rules in terms of price and allocation of time.⁵² Similarly, election competitors must respect the rules on financing and media access, which in turn must be clear and foreseeable.⁵³

Effective Remedy: Legal protection of the electoral process is not only implied in the electoral commitments, but it is also an indispensable element of the OSCE human rights' protection architecture. Bearing that in mind, an effective remedy means: a) impartial and independent administrative bodies and judiciary; b) administrative and judicial procedures which are public and transparent; c) available appeals for all aspects of the electoral process; d) proceedings concluded within short deadlines in order not to delay the final electoral results; and e) decisions that are reasoned and publicly available.⁵⁴

During the pre-election phase, adequate and effective remedies must be in place for the voters' registration,⁵⁵ nomination of candidates and violations of the electoral campaign rules by the candidates, the submitters of candidates' lists⁵⁶ and the media.⁵⁷ The criminal-law remedies must be effective enough to end impunity in election-related cases.⁵⁸

⁴⁹ Final Report on 2010 Parliamentary Elections in the Slovak Republic, p. 11.

⁵⁰ See paragraph 5.4 of the 1990 Copenhagen Document, stipulating that there must be a separation between political parties and the state, and they must not be mixed. See also Statement of Preliminary Findings and Conclusions 2013 Presidential Elections in Montenegro, p. 6.

⁵¹ Among others, see Statement of Preliminary Findings and Conclusions with respect to Macedonia, 2013 Municipal Elections 2nd round, p. 2, and 2012 Final report of the Early Parliamentary Elections in Montenegro, p. 21.

⁵² OSCE Handbook on Media Monitoring for Election Observation Missions (2012) pp 13-14, 25-29; Final Report on 2011 Croatian Parliamentary Elections, p. 18.

⁵³ See, among others, the 2013 Election Assessment Mission Report on Iceland, pp. 9-10.

⁵⁴ Petit, ODIHR, Resolving Election Disputes in the OSCE Area: Towards A Standard Election Disputes Monitoring System (2000) pp. 6, 9-15.

⁵⁵ OSCE/ODIHR Handbook for the Observation of Voter Registration (2012) pp. 28 and 55. See also Statement of Preliminary Findings and Conclusions with respect to Armenian Presidential Elections, p. 2.

⁵⁶ See, among others, Final Report on 2011 Parliamentary Elections in Turkey, p. 20.

⁵⁷ See, among others, Final Report on 2012 Parliamentary Elections in Romania, pp. 17-18; Final Report on 2010 Parliamentary Elections in the Slovak Republic, p. 14.

⁵⁸ Final Report of the 2012 Early Parliamentary Elections in Kazakhstan, pp. 18 and 28. Although not in Europe, Kazakhstan has been included in the analysis for better illustration of the OSCE standards to which it has consented.

Disadvantaged groups: The OSCE commitments require greater inclusion of women in political life, both as candidates and as members of election bodies.⁵⁹ Gender quotas should be used as a mechanism to achieve it.⁶⁰ As for national minorities, information about electoral processes must be available in their languages, as well as voter education programmes for those minorities prone to intimidation.⁶¹

Election Day

Voters: Voters must be able to cast a secret ballot.⁶² The secrecy of ballots is a safeguard of the active election right and of the integrity of elections.⁶³ Proper identification of voters is indispensable for protecting the equality of votes.⁶⁴ Polling stations and voting must be accessible to persons with special needs in line with the principle of universality.⁶⁵ Detainees must be allowed to vote in accordance with a presumption of innocence.⁶⁶

Intimidations or any kind of pressures on voters must be effectively prohibited and suppressed.⁶⁷

Family,⁶⁸ group,⁶⁹ proxy⁷⁰ and multiple voting⁷¹ is strictly interdicted.

If e-voting is foreseen, it must be transparent and its integrity must be safeguarded.⁷²

⁵⁹ See 2004 Sofia Document, Action Plan for Promotion of Gender Equality; 2011 Final Report on Spanish Early Parliamentary Elections, p. 19.

⁶⁰ Final Report on 2011 Parliamentary Elections in Turkey, p. 23.

⁶¹ Final Report on 2010 Parliamentary Elections in the Slovak Republic, pp. 16-17.

⁶² The Copenhagen Document gives as an alternative other free voting procedure, which must fulfill the said conditions. See 2011 Final Report on Parliamentary Elections in Croatia, p. 19. This requirement applies to illiterate voters also.

⁶³ 2011 Final Report on Spanish Early Parliamentary Elections, p. 21.

⁶⁴ Final Report on 2005 General Elections in the UK, p. 14.

⁶⁵ Final Report on 2011 Parliamentary Elections in Turkey, p. 25.

⁶⁶ Election Observation Handbook, (5th edition) (2007) p. 57.

⁶⁷ For example, Final Report on 2012 Early Parliamentary Elections in Montenegro, p. 11; 2009 Macedonian Presidential and Local Elections, p. 25; Final Report on 2010 Parliamentary Elections in the Slovak Republic, p. 19.

⁶⁸ See, among others, Final Report on 2008 Macedonian Early Parliamentary Elections, p. 19.

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⁶⁹ Among others, ODIHR Statement on 2nd round of the 1996 Lithuanian Parliamentary Election.

⁷⁰ OSCE/ODIHR, Handbook for Monitoring Women's Participation in Elections (2004) p. 39. While in some countries proxy voting is legally allowed, ODIHR always requires proper safeguards for the integrity of the voting.

⁷¹ Among others, see Assessment Mission Report of 2004 Romanian Presidential and Parliamentary Elections, p. 31.

⁷² OSCE/ODIHR Supplementary Human Dimension Meeting "Challenges of Election Technologies and Procedures", Final report (2005) pp. 3-4; OSCE/ODIHR 2008 Discussion Paper in preparation of Guidelines for the Observation of Electronic Voting.

Counting: Counting of the votes must be done transparently and honestly,⁷³ with official results made public for each polling station.⁷⁴

Security: All electoral participants, not only voters, must feel safe and secure. Any heavy unnecessary presence of the police might be intimidating not only for voters, candidates and their supporters, but also for the election administration. Therefore, effective and efficient prosecution and conviction of those held responsible for electoral offences is a necessary precondition for holding free and fair elections.

Post-election phase

Campaign Financing: The accountability of the electoral contestants is intrinsically linked with election expenditures reporting and auditing.⁷⁵ Impartial and effective media monitoring and reporting is one of the safeguards against unlawful or excessive electoral campaign expenditure.⁷⁶

Effective Resolution of Electoral Disputes: Post-election complaints and appeals must be dealt with in a timely manner,⁷⁷ to enable the results to be published as soon as possible. Delayed results might raise suspicion regarding their accuracy. It follows that transparency and publicity at the level of administrative bodies and the courts are a *sine qua non* for effective resolution of electoral disputes.⁷⁸ There must be an effective remedy to challenge election results. Election results that have been tampered with must be invalidated, regardless of their impact on the electoral outcome. Otherwise, the voters whose votes were annulled could not contribute to the election of their representatives. This is also important in case of public funding received per vote gained.

⁷³ ODIHR Annual Report (2011) p. 9.

⁷⁴ See, among others, 2011 Final Reports on Local Elections in Moldova, p. 24, and on Spanish Early Parliamentary Elections, p. 22.

⁷⁵ For example, see ODIHR Final Report with respect to Finnish 2011 Parliamentary Elections, pp.13-14; Final Report on 2010 Parliamentary Elections in the Slovak Republic, pp. 10-11.

⁷⁶ Final Report on 2010 Parliamentary Elections in the Slovak Republic, p. 13; Final Report on 2011 General Elections in Turkey, p. 20.

⁷⁷ Ibid, p. 18.

⁷⁸ Final Report on 2011 Parliamentary Elections in Turkey, p. 21.

Mandate Entrusted to a Winning Candidate: An honest tabulation and public reporting of the electoral outcome must result in the elected office being taken by a candidate chosen in line with the electoral formula foreseen by law. The winning candidates must be installed and occupy the office until expiration of their term, meaning that election results must be fully respected and implemented.⁷⁹

In shorth, the will of the people must have been freely expressed and passive and active election rights safeguarded.

SLIDE 12 EU support modalities –democracy in action

The pace of EU integration of the Western Balkan countries is slow, which is especially the case of North Macedonia. The Western Balkan countries are struggling with their ability to satisfy the EU democratic criteria and ensure the stability of democratic institutions and the rule of law. Of course another question that arises regarding EU integration is the EU absorption capacity for the countries situated in the Western Balkans. Regardless of the EU absorption capacity, which is also set out in the 1993 Copenhagen (accession) criteria,⁸⁰ for the region or one or more countries from W. Balkans, the citizens must be afforded elections with integrity.

So what is EU doing to ensure election integrity in the Western Balkans, and thus increase the legitimacy and credibility of the process , but also of the parties who are forming the Government?

SLIDE 13

First and the most important is the monitoring of the countries' progress along the EU path, which is effective if there is a credible enlargement process with clear criteria. Electoral developments are always mentioned in the Commission's progress reports in the part devoted to the political criteria. The Commission is also underscoring any recommendations from the previous annual report which remained unaddressed. I take BiH as an example the lack of implementation of Finci -Sejdic judgment has been also mentioned in BiH report of the Commission. No progress was made in improving the electoral framework in line with European standards and ensuring transparency of political party financing. Amendments adopted in July 2020 should allow holding local elections in Mostar for the first time since 2008

ECtHR Baralija case – Mostar no local democratic elections, thus discrimination.

⁷⁹ Ghebali, Debating Election and Election Monitoring Standard at the OSCE: Between Technical Needs And Politicization (...) p. 217.

⁸⁰ European Council in Copenhagen, 21-22 June 1993, SN 180/1/93 REV 1.

This also indicated the interplay with two other European organisations – CoE and OSCE/ODIHR. We can see that EU is also reporting on the enforcement of the ECtHR judgments and making a follow up on the election observation reports of the OSCE/ODIHR and the Venice Commission from CoE – clearly mentioned in the above report. So these three organisations are speaking in one voice.

The Commission also keeps the EU Council and European Parliament informed throughout the process, through regular reports, strategy papers and clarifications on conditions for further progress.

SLIDE 14 – Support for electoral reform demonstrates even better this interplay between the European regional organisations in the election sphere

Second, EU election reform support programmes 07 - EU4Rule of Law: Citizens Engagement for Public Integrity Horizontal support / FLAGSHIP 1 Direct 2 500 000 08 - EU4Democracy: Support to electoral reform in the Western Balkans Horizontal support / FLAGSHIP 1 Indirect 1 500 000 EU4 Democracy: Support to electoral reform in the Western Balkans EUR 1 500 000 (2021-20 6 years from signature) 2027

KEY weaknesses detected from the election observation reports

1. Low confidence in the impartiality and independence of electoral management bodies (EMBs) and the electoral process, including concerns about undue influence from beneficiary institutions. In several cases, the effectiveness of EMBs has been undermined by a lack of adequate legal frameworks and limited capacity while the transparency of the electoral process has been weakened by restricted access for election observers and media;
2. Concerns about the accuracy of voter lists and voter registration processes as well as a lack of sustainable mechanisms to ensure effective coordination and consistency with existing population registers. In some cases, electoral stakeholders have not been provided with meaningful opportunities to check and verify the accuracy of voter lists;
3. Unequal access to media as well as insufficient legal safeguards to guarantee the freedom of expression and the criminalization of defamation, limiting the opportunity for candidates to convey their message to the electorate on an equal basis and impacting as such voters' capacity to make informed choices. Media regulatory bodies often lack the mandate, resources and professional capacities to provide effective oversight of electoral campaigns in the media;
4. Violence and/or intimidation during electoral campaigns. In addition, campaign finance rules do not always apply equally to all candidates and political disclosure mechanisms in place do not fully promote and ensure transparency and accountability; and
5. Limited capacity and independence of electoral dispute resolution bodies, including the election administration and courts, to effectively adjudicate election disputes

It is in line with the 2018 Western Balkans Strategy and emphasises the need to implement the election observation missions recommendations.

It contributes to strengthening democratic institutions and processes in the Western Balkans through support to electoral reform. Capacity building on the implementation of electoral recommendations and raised awareness on electoral reforms, the action will aim to bring the conduct of elections closer in line with Organization for Security and Co-operation in Europe (OSCE) commitments and other international obligations and standards for democratic elections. This action builds on the positive results of previous OSCE/Office for Democratic Institutions and Human Rights (ODIHR) implemented elections reform support. It is fully in line with the Western Balkans Strategy that stresses the importance of free and fair elections and the proper implementation of recommendations of electoral observation missions.

Objective: to improve the implementation of electoral recommendations in five thematic areas in IPA II beneficiaries. Expected results: 1) knowledge and capacities of institutions and CSOs in 5 thematic areas enhanced; (2) targeted on-demand legal expertise and in-depth technical assistance provided; (3) information on the efforts and challenges in the implementation of electoral recommendations updated; (4) exchange of best practice at the sub-regional and regional levels carried out; and (5) awareness of electoral reforms at regional and relevant IPA II beneficiary level enhanced.

In co-ordination with OSCE/ODIHR, the EU will, as necessary, engage with host authorities to secure this cooperation, and thus EU is used as a leverage to push for implementation of the recommendations. IPA II beneficiaries are encouraged to task a lead agency to co-ordinate institutions and facilitate information exchange and discussion among election stakeholders. The lead agency would be the primary contact point for the implementing partner.

In five (5) thematic areas: i) effectiveness of electoral management bodies (EMBs), ii) voter lists and voter registration processes, iii) capacity and know-how of media regulatory bodies and media coverage during elections, iv) election campaign rules, and v) capacity and know-how of electoral dispute resolution bodies. 21

The EU was also funding a previous programme on election reform which was implemented by OSCE/ODIHR, which has ended. Support to Elections in the Western Balkans' 2017-2020, focusing on OSCE/ODIHR recommendations.

SLIDE 15

Third, Election observation is a vital EU activity aiming to promote democracy, human rights and the rule of law worldwide. It contributes to strengthening democratic institutions, building public confidence in electoral processes, helping to deter fraud, intimidation and violence. It also reinforces other key EU foreign policy objectives, in particular peace-building.

However, the EU does not regularly observe by its own missions the elections in Western Balkans, except for Kosovo, which used to rely heavily on the OSCE Mission in Kosovo for organizing and observing the elections. Only Kosovo observed in 2019 for early national elections and presented its recommendations.

The EU EOM Final Report contains 23 recommendations to improve future electoral processes in Kosovo. *“There are recurring systemic problems with the election process. For instance, lack of clear provisions on challenging results at all levels, issues concerning the accuracy of the voter list, inadequate campaign finance regulation and oversight, and many others. These problems need to be urgently addressed, considering also the efforts already taken by the Assembly’s ad-hoc parliamentary committee, in order to bring Kosovo fully in line with international standards for democratic elections”*, concluded Mrs von Cramon-Taubadel.

However, there is also the European Parliament’s Democracy Support and Election Coordination Group which is observing elections in cooperation with ODIHR. Usually other groups join the ODIHR election observation mission but only for the ED.

In 2020 President of the European Parliament David Sassoli announced observation of parliamentary elections in Montenegro, <https://europeanwesternbalkans.com/2020/07/13/sassoli-observing-elections-in-montenegro-is-a-priority/>

Western Balkans is in among the priorities of the European Parliament’s Democracy Support and Election Coordination Group, according to their annual programme. There are different European organisations and their institutions involved in election observation that deserves mapping to discern who is doing what, where and when.

SLIDE 16– facilitating dialogue negotiations and supporting decision making process

PARLIAMENTARY ELECTORAL Dialogue

The EU is also involved in resolving difficult and tense situations in the country when maybe early elections are warranted.

EU power is used as leverage to push for reforms and implementations of the recommendations as seen before. For example if through EU funding an international election expert is situated in the SEC to provide technical advice, then EU D. can be called in in case the role of the adviser is blocked.

SLIDE 17 Positive and negative sides

SLIDE 18 - Conclusions

1. Elections and stability of democratic institutions from the Copenhagen criteria are not the same, but elections with integrity have been recognized as EU as sine qua non for the development and stability of the democratic system in the W Balkans.
2. Election integrity matters first and most for the people of the Western Balkans who do not deserve less than elections in compliance with democratic election standards, with EU standards, regardless of the EU's absorption capacity.

-The Union's **absorption capacity** has been also mentioned in the Copenhagen criteria, which has been lately also playing a role in the determination of the approximation of the Western Balkans and individually for each of the countries

Nurturing legal and political democratic culture is the key to sustainability of all the efforts invested into elections with integrity in the Western Balkans. Democratic legal and political culture must take a permanent hold to counterbalance aggressive behaviors based on corruption, unfairness and exploiting of vulnerabilities.

Citizens deserve elections with integrity, all that advances forward to the permanent values is good with causing no harm to anybody.